

Our Ref: IM-FOI-2022-0001
Date: 19th January 2022



FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response.

- 1. I would like to request the number of LGBTQ+ victims of homicide since 2016. If you could provide the name of each victim, the date it occurred and where the homicides took place in each instance.**
- 2. I would like to request the how many of these homicides are solved and how many remain unsolved.**
- 3. If you could provide the rates of prosecution and conviction for those murders that were solved as well as the timeframe between discovery of the body and charges being brought.**

I must first of all advise you that Police Scotland does not use the terms 'unsolved' or 'solved' but instead uses Resolved, Unresolved and Undetected.

Unresolved Homicides are deaths where there is clear evidence of homicide (including corporate homicide) or there is suspicion that the death has resulted from the homicidal act or omission of another in respect of which:-

- (a) No Suspect has been identified
- (b) A suspect has been identified but not charged (no proceedings)
- (c) A suspect has been identified and charged but not placed on petition (no proceedings)
- (d) A suspect has appeared on petition but no indictment served due to there being considered an insufficiency of evidence at that time (no proceedings)
- (e) A suspect has been indicted and a trial concluded which has resulted in an acquittal (Not Guilty/Not Proven)
- (f) A suspect has been convicted but acquitted on appeal and no fresh prosecution has been authorised by the Appeal Court (Not Guilty)
- (g) A suspect has committed suicide prior to trial and no other person is being sought in connection with the case.

Undetected Homicides are those cases where no person has been formally identified as the accused or charged with offence.

The distinction is important as many homicides, particularly those committed during the last few years during the Covid-19 pandemic, are still awaiting court proceedings to bring

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them to a legal conclusion. In this regard, Police Scotland categorise and record these homicides as Unresolved.

Having considered your request which is specific to LGBTQ+ victims, I regret to inform you that I am unable to provide you with an accurate response.

By way of explanation, Police Scotland adhere to the Equality Act and the protected characteristics of the Act. Police Scotland also follows the Police Scotland Diversity Booklet, inclusive of any individual they come into contact with.

When recording information relating to the victim and accused, the accused's gender will be taken straight from the individual and how they self-identify. The victim's gender will be taken from all the available knowledge received regarding the victim at the time.

Further information on an individual's gender and sexual orientation will only be recorded within the body of the report if it is deemed relevant or pertinent to the case - it is **not** recorded in all cases.

I can however confirm that since 2016 there has been one victim who was known to be bisexual and therefore LGBTQ+. Investigations were carried out however the individual's sexuality had absolutely no relevance to the crime committed.

In terms of your request for the name of the victim and details of the homicide, I am refusing to provide you with the information sought.

Section 16 of the Act requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

- (a) states that it holds the information,
- (b) states that it is claiming an exemption,
- (c) specifies the exemption in question and
- (d) states, if that would not be otherwise apparent, why the exemption applies.

I can confirm that the information sought is held by Police Scotland and the exemption that I consider to be applicable to the information requested by you is section 38(1)(b) - Personal Data

Personal data is defined in Article 4 of the General Data Protection Regulation (GDPR) as:

'Information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person'

Section 38(2A) of the Act provides that personal data is exempt from disclosure where disclosure would contravene any of the data protection principles set out at Article 5(1) of the GDPR which states that:

'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject'

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Article 6 of the GDPR goes on to state that processing shall be lawful only if certain conditions are met. The only potentially applicable condition is set out at Article 6(1)(f) which states:

'Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child'

Whilst I accept that you may have a legitimate interest with regards the disclosure of this information and that disclosure may well be necessary for that purpose, I am nonetheless of the view that those interests are overridden by the interests or fundamental rights and freedoms of the data subject. On that basis, it is my view that disclosure of the information sought would be unlawful.

Please note that when recording a Homicide on the database, the "motive" section has the option if the crime is related to a person's sexuality, i.e. Homophobic.

The Scottish Government publish statistics broken down by motive, age, gender etc. which may be of some interest to you:-

[Homicide in Scotland 2020-2021: statistics - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Should you require any further assistance please contact Information Management Dundee, quoting the reference number given.

If you are dissatisfied with the way in which Police Scotland has dealt with your request, you are entitled, in the first instance, to request a review of our actions and decisions. Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to foi@scotland.pnn.police.uk or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision. You can apply [online](#), by email to enquiries@itspublicknowledge.info or by post to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Office of the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information [Disclosure Log](#) in seven days' time.